

JAMES L. PATTERSON ET AL.

IBLA 94-262

Decided December 16, 1996

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees or submit a qualifying certification of exemption from payment. CMC 200104, et al.

Affirmed as modified.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, must file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption is claimed. When the applicant fails to pay the rental fee for either of the assessment years and the record indicates no certification of exemption from rental fees was filed for the assessment year ending Sept. 1, 1994, the claims are properly deemed abandoned and void.

APPEARANCES: James L. and Margie L. Patterson, Naturita, Colorado, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

James L. Patterson and Margie L. Patterson have appealed from a decision of the Colorado State Office, Bureau of Land Management, declaring mining claims (CMC 200104-CMC 200106, CMC 207913-CMC 207914, CMC 207933-CMC 207934, CMC 207948-CMC 207950) abandoned and void. The basis for the BLM decision was the failure to pay rental fees or submit a qualifying certification of exemption from payment by August 31, 1993.

BLM's decision declared the claims abandoned and void because the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), P.L. 102-381, 106 Stat. 1374, 1378-79, had not been met. BLM explained that, under the Act, in order to maintain a mining claim, claimants had to either pay rental fees for each claim or submit a certification of exemption from payment of rental fees (small miner exemption) on or before August 31, 1993. BLM did not receive any rental fees for appellants' claims, but on August 30, 1993, it did receive a certification of exemption for the assessment year beginning

September 1, 1992, and ending September 1, 1993, listing 10 claims. However, BLM determined the exemption was insufficient because appellants did not meet the 10-claim requirement of the Act and regulations. 43 CFR 3833.1-6 (1993). The decision did not list the additional claims BLM believed appellants owned, but affidavits of assessment work in the case record show appellants filed proof of assessment work on 54 mining claims, including the 10 claims at issue in this appeal, with BLM in December 1992.

Hence, BLM concluded that the small miner's exemption did not apply and declared the claims abandoned and void.

The decision in this appeal is controlled by provisions of statute. The Act of October 5, 1992, provides in part that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993, in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act also contains an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The only exception provided from this rental requirement is the so-called small miner's exemption, available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993), which essentially tracks the statutory criteria. William B. Wray, 129 IBLA 173 (1994). While appellants timely filed a certification of exemption for the assessment year ending September 1, 1993, BLM denied the exemption because it concluded that appellants owned more than 10 claims. In their notice of appeal, appellants noted that they had filed their assessment work notices with BLM and filed under the small miner's exemption for only the 10 claims at issue here. They stated that they gave the balance of their claims to "a mining man in Nevada." Appellants' intent to drop the other claims finds corroboration in their affidavit of annual assessment work filed with BLM on August 30, 1993, in which they listed only the 10 claims they listed on their certification of exemption as the claims upon which assessment work had been performed.

Appellants have a valid point regarding their eligibility for an exemption based on holding only 10 claims. Qualifications for a rental fee exemption include the requirement that the claimant shall hold 10 or fewer mining claims. 43 CFR 3833.1-6 (1993). The record supports a conclusion that appellants met this condition as of the August 31, 1993, deadline. See Washburn Mining Co., 133 IBLA 294 (1995). In that case,

Washburn Mining Company (Washburn) had timely filed certifications of exemption for both years, but BLM had denied the exemption because it had concluded that appellant owned more than 10 claims. On appeal, Washburn argued that it had dropped two claims in order to meet the small miner exemption, noting that the statement of annual assessment work it had recorded on August 24, 1993, and the notice it had filed with the U.S. Forest Service concerned only the 10 claims listed on its certifications of exemption. The Board found those circumstances sufficient to establish that Washburn had owned only 10 claims as of the date it had filed its certification seeking the small miner exemption and vacated BLM's decision. Washburn Mining Co., 133 IBLA at 296. Similarly, the facts of this case convince us that appellants owned only 10 claims as of the date they filed their certification of exemption.

[1] Notwithstanding appellants' apparent eligibility for an exemption from the rental fee for the assessment year ending on September 1, 1993, the record discloses a fatal omission in the filings in support of appellants' claims. The statute and the implementing regulations clearly require a timely filing (by August 31, 1993) of either a \$100 rental fee or a certification of exemption for each of the relevant assessment years, i.e., the assessment year ending September 1, 1993, and the assessment year ending September 1, 1994. See 106 Stat 1378-79; 43 CFR 3833.1-7(b) and (d), 3833.4(a)(2) (1993). Thus, the applicant for a small miner exemption is required to file a separate certificate by August 31, 1993, for each of the two assessment years (ending September 1, 1993, and ending September 1, 1994) for which he is seeking an exemption. Edwin L. Evans, 132 IBLA 103, 105 (1995). In this case in which no rental fees were paid for either assessment year, two certifications were required by August 31, 1993: one for the assessment year ending September 1, 1993, and another for the year ending September 1, 1994. 43 CFR 3833.1-7(d) (1993); Edwin L. Evans, supra at 106. The case record includes a certification of exemption for the assessment year ending September 1, 1993, but none for the assessment year ending September 1, 1994. Accordingly, the BLM decision declaring the claims void must be affirmed, as modified, on this basis.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified by this decision.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Burski
Administrative Judge